IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 199 of 1998

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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RAJENDRAKUMAR CHANDRASHANKER JANI - Petitioner(s)

Versus

THAKORE AMRATBEN WD/O TALAJI VAGHAJI - Respondent(s)

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Appearance :

MR MEHUL SHARAD SHAH for Petitioner No(s).: 1.

None for Respondent No(s).: 1.

MR. SARTHAK VYAS for MR PK JANI for Respondent No(s).: 1 - 1.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 22/06/2005

ORAL JUDGMENT

1. By filing instant petition under Section 115 of the Code of Civil Procedure, the petitioner seeks to challenge the order dated 21.11.1997 recorded in Civil Misc. Application No. 86 of 1997 by the learned 5th Extra Assistant Judge, Mahesana by which the application filed by the respondents seeking condonation of delay of 8 months and 29 days caused in preferring the appeal has been allowed and thereby delay as prayed for is condoned.
2. The petitioner is the power of attorney holder of original plaintiff who has filed Regular Civil Suit No. 179 of 1986 before the learned Civil Judge (JD), Mahesana under the provisions of the Bombay Rent Act, praying for decree of eviction against the respondents. It was the case of the petitioner that the respondents were irregular in paying rent of the suit shop and they were in arrears of rent for the period from 31.12.1980 to 1.6.1985. The petitioner therefore issued notice of eviction to the respondents on the ground of non-payment of rent and therefore filed Regular Civil Suit Suit No. 179 of 1986 before the learned Civil Judge (JD), Mahesana.
3. The Suit was resisted by the respondents by filing written statement at exh.11. The learned trial Judge has passed the decree of eviction vide order dated 9.11.1997. The petitioner thereafter filed Execution Application No. 48 of 1997 before the learned Civil Judge (JD), Mahesana. The learned Civil Judge (JD), Mahesana, issued possession warrant vide order dated 2.9.1997 and thereafter on 4.9.1997 in the presence of two Panch witnesses, possession was handed over to the petitioner. Being aggrieved by the order passed in Regular Darkhast No. 48 of 1997, respondents preferred Regular Civil Appeal No. 103 of 1997 before the learned District Judge, Mahesana. The said Appeal came to be dismissed vide order dated 19.11.1997.
4. The respondents have preferred Appeal against the judgement and order passed by the learned Civil Judge (JD), Mahesana in Regular Civil Suit No. 179 of 1986 and, as there was a delay of 8 months and 29 days caused in preferring the Appeal under Section 29 of the Bombay Rent Act, the respondents filed Civil Misc. Application No. 86 of 1997 in the District Court seeking condonation of delay in preferring the Appeal. The learned 5th Extra Assistant Judge vide order dated 21.11.1997 condoned the delay as prayed for which has given rise to the present revision application at the instance of the petitioner/original plaintiff.

5. This Court has considered the submissions advanced by Mr. M.S.Shah, learned advocate of the petitioner and Mr. Sarthak Vyas, learned advocate for Mr. P.K.Jani, learned advocate of the opponent, perused the averments made in the application as well as the impugned order and also considered the celebrated principles governing the discretionary exercise of powers under Section 5 of the Limitation Act, 1963.
6. There is no manner of doubt that the question of condonation of delay has to be decided having regard to the principle laid down by the Supreme Court **(i)** State of Bihar &others v. Kamleshwar Prasad Singh &another, 2000 AIR SCW 2388 (para 11 to 14 of the reported judgement, **(ii)** N.Balakrishnan v. M.Krishnanmurthy, Judgement Today 1998 (6) SC 242, **(iii)**State of Haryana v. Chandra Mani &others, AIR 1996 SC 1623, **(iv)** Spl. Tehsildars, Land Acquisition, Kerala v. K.V.Ayisumma, AIR 1996 SC 2750, **(v)** Punjab Small Industries and Export Corporation Ltd. and others v. Union of India and others, 1995 Suppl. (4) SCC 681, **(vi)** P.K.Ramchandran v. State of Kerala &another (1997) 7 SCC 566 and **(vii)** Collector, Land Acquisition, Anantnag v. Mst. Katiji, AIR 1987 SC 1353 and other relevant decisions on the point.
7. Applying the principle laid down by the Supreme Court in above referred to judgements, to the facts of the present case, it can be said that respondent has shown sufficient cause for condonation of delay. The record does not indicate that there was any inaction or negligence on the part of the respondent in prosecuting the appeal. The explanation for delay offered by the respondent is not only plausible but acceptable.
8. In aforesaid view of the matter, the learned 5th Extra Assistant Judge has rightly condoned the delay. In paragraph 7 of the judgement, the learned 5th Extra Assistant Judge has observed that the respondent was not represented before the trial Court as is evident from the impugned judgement and decree and exh. 60 because of the withdrawal of appearance by the learned advocates and therefore they were not aware of the impugned judgement and decree. This itself was sufficient cause which prevented the applicant from approaching the District Court for filing the appeal against the impugned judgement and decree within the stipulated period of limitation. As soon as they came to know about the same on 8.9.1997 they have promptly preferred the appeal on 10.9.1997 alongwith the application for condonation of delay.
9. In view of the aforesaid factual matrix and more particularly in view of the settled principles enunciated by the Supreme Court to which the reference is made in earlier paragraph, no matter can be thrown

over board without hearing the parties.

10. Seen in the above context, this Civil Revision Application lacks merit and deserves to be rejected.

11. For the foregoing reasons, the Civil Revision Application fails and accordingly it is rejected. Rule is discharged. Interim relief granted earlier shall stand vacated.

12. It is made clear that the learned appellate Judge who shall hear the Regular Civil Appeal which is sought to be filed by the respondent, shall be decided strictly on merits and in accordance with law.

(A.M.Kapadia,J)